



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,547	08/01/2003	David Anafi	367264-102	2684
7590	09/28/2006			EXAMINER VALENTIN, JUAN D
Steven M. McHugh Brown Rudnick Berlack Israels LLP One Financial Center Boston, MA 02111			ART UNIT 2877	PAPER NUMBER

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/632,547	ANAFI ET AL.	
	Examiner	Art Unit	
	Juan D. Valentin II	2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 7-12 is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ . | 6) <input type="checkbox"/> Other: ____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1 rejected under 35 U.S.C. 103(a) as being unpatentable over Salamon et al. (USPN '702, hereinafter Salamon) in view of Molloy (USPN '578 B1).

Claims 1, 3, 4, 5

Salamon discloses at least one light source (Fig. 2, 10) operable to generate a source beam, an optical element (prism) having an optical surface with both metallic and dielectric layers (lipid bilayer) (claims 4-5, Fig. 1), a support block formed with at least one sample well having a center (Fig. 3, 20), the source beam being aimed at the sample well, the support block being disposed on the optical surface thereby defining a substantially vertical rear cell surface having a center, and a detector (Fig. 2, 50) operable to detect light that is at least one of reflected and scattered by the layer under test (col. 3, line 30-col. 4, line 12). Further, Salamon discloses the use of a fluid dispensing device to apply a membrane solution onto the measurement site located on the prism 20 (Fig. 3, col. 3, lines 44-50).

Salamon substantially teaches the claimed invention except that it fails to show multiple measurement sites and a syringe filled with the membrane solution in fluid communication with a needle having a distal end disposed in front of the sample well, the distal end being aimed at a

point above the center of the rear cell surface, the syringe be operable to eject a steady stream of membrane solution from the needle onto the circular rear cell surface thereby forming a membrane defining at least a portion of a layer under test, the membrane having a substantially uniform thickness that covers substantially the entire rear cell surface. Molloy shows that it is known to provide the use of multiple measurement sites and a syringe to dispense a sample in fluid communication with a sample well, the syringe be operable to eject a steady stream of sample solution thereby forming a membrane defining at least a portion of a layer under test, the membrane having a substantially uniform thickness that covers substantially the entire rear cell surface (Fig. 1, col. 5, lines 30-36, col. 7, lines 27-39, col. 3, lines 42-50) for an surface plasmon resonance sensor (col. 1, lines 9-18). It would have been obvious to someone of ordinary skill in the art to combine the device of Salamon with the fluid dispensing means (syringe) of Molloy for the purposes of providing sample injection into the measurement well (Molloy, col. 7, lines 7-8).

Claims 2, 6

Official notice taken. It is the position of the Office that the use of actuators (pumps) in combination with a processor to use with a syringe or syringe type fluid dispensing systems is well known and obvious to someone of ordinary skill in the art for the purposes of closely regulating the application of the fluid dispensed from the syringe.

It would have been obvious to someone of ordinary skill in the art at the time of the claimed invention to use a syringe and actuator system to dispense a fluid into each of the multiple measurement chambers as disclosed by Molloy shown above.

Conclusion

"Several facts have been relied upon from the personal knowledge of the examiner about which the examiner took Official Notice. Applicant must seasonably challenge well known statements and statements based on personal knowledge when they are made by the Board of Patent Appeals and Interferences. In re Selmi, 156 F.2d 96, 70 USPQ 197 (CCPA 1946); In re Fischer, 125 F.2d 725, 52 USPQ 473 (CCPA 1942). See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice). If applicant does not seasonably traverse the well-known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, applicant is charged with rebutting the well-known statement in the next reply after the Office action in which the well known statement was made."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Juan D. Valentin II whose telephone number is (571) 272-2433. The examiner can normally be reached on Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2877

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Juan D. Valentin II
Examiner 2877
JDV
September 23, 2006



Michael P. Stafira
Primary Patent Examiner
Technology Center 2800